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INTERSTATE COMMERCE COMMISSION

LEASE

THIS LEASE AGREEMENT, made and entered into on this 21st day of June, 1971, by and between FORT DODGE, DES MOINES & SOUTHERN RAILWAY COMPANY, an Iowa corporation, hereinafter called "Lessor," and CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation, hereinafter called "Lessee,"

## WITNESSETH:

RECITALS: Lessee controls Lessor through its control of its 99% owned subsidiary, Des Moines and Central Iowa Railway Company, which owns more than 98% of Lessor's outstanding common stock. Lessor owns and operates lines of railroad in the State of Iowa. Lessor's lines of railroad have several points of connection in this state with the lines of railroad operated by Lessee. The two companies have many common officers and have co-operative working arrangements by means of pooling, trackage and joint facility agreements. Lessor and Lessee now consider it desirable to unify their operations and to thereby benefit from the economies and increased efficiency which will result. Accordingly, Lessor and Lessee enter into this lease agreement upon the terms and conditions hereinafter set forth.

1(a). Lessor, in consideration of the performance of each of Lessee's covenants and agreements herein, and for

and during the term hereinafter described, hereby leases to Lessee all of the lines of railroad which Lessor now owns and hereby leases and assigns to Lessee all rights to use lines of railroad which Lessor now operates under its existing trackage agreements and its lease of Des Moines Western Railway Company, all as more particularly described as follows:

<u>Owner of Road or Track</u>	<u>Termini Between Which Road Named Extends</u>	<u>Main (M) or Branch (B) Line</u>	<u>Miles of Road</u>
Fort Dodge, Des Moines and Southern Railway Company	Des Moines-Ft. Dodge	M	83.13
	Hope-Gowrie	M	8.18
	East Ft. Dodge-Webster City	M	<u>19.39</u>
	TOTAL M		110.70
(Operated Under Lease)			
Des Moines Western Railway Company		M	1.37
	Sidings		<u>3.46</u>
TOTAL			4.83
(Operated Under Track- age Agreements)			
Chicago and North Western Railway Company	Ft. Dodge-Eagle Grove	M	17.8
	Eagle Grove-Jewell	M	29.1
	Jewell-Des Moines	M	53.6
	Ames-Boone	M	<u>14.5</u>
TOTAL M			115.0
Fort Dodge, Des Moines and Southern Railway Company	Yard Tracks and Sidings		28.73
TOTAL MILEAGE OPERATED			<u>259.26</u>

including, but not limited to, buildings, rolling stock, right of way, depot and depot grounds, side tracks, shops, platforms, sheds, telegraph lines, signals, signal equipment, terminals and all of Lessor's other property (whether real, personal or mixed) and facilities of every nature and kind whatsoever,

whether herein particularly set out and described or not; provided, however, that Lessor's investments, receivables, cash and any other current assets as shown on its General Balance Sheet as of the commencement of the term of the lease shall not be transferred to Lessee under the terms of this lease. Lessor also specifically leases and assigns to Lessee any and all rights (contractual or otherwise) held by Lessor to use tracks or other property or facilities, and all other rights, privileges, franchises and appurtenances belonging or appertaining to any of the property now owned or used by Lessor. This lease and Lessee's rights hereunder are subject, however, to the Indenture of Mortgage and Deed of Trust executed by Lessor to Iowa-Des Moines National Bank & Trust Company, as Trustee, dated as of January 1, 1941, and subject also to all equipment trust agreements, liens, encumbrances, obligations, contracts and other agreements now in effect to which Lessor is a party, and to other prior liens which may hereafter be created with Lessee's consent.

1(b). Lessor also covenants and agrees to transfer, and does hereby transfer, to Lessee for and during the term of this lease any and all of its voting rights, privileges and powers with respect to any and all securities, investments and stocks owned or held by it.

1(c). Lessor further covenants and agrees that during the existence of the lease it will not issue, without Lessee's consent, any stock, bonds, notes or other obligations and evidences of indebtedness which would constitute a lien on the leased property superior to this lease.

2(a). In consideration for Lessor's covenants and agreements hereunder, Lessee covenants and agrees that during

the term of this lease it will, at its own cost and expense, maintain, operate and use the leased property, and will furnish all necessary motive power, rolling stock, equipment, tools and supplies, and comply with and perform all properly applicable legal requirements with respect to such maintenance, use and operation. Lessee further covenants and agrees that it will not, by any act or omission, subject the leased property or any part thereof to any lien or charge which may become prior to the lien of the aforesaid Mortgage of Lessor's property or subject Lessor to any legal penalty or damage, or cause forfeiture of the leased property or any part thereof. Lessee further covenants and agrees to save Lessor harmless from and against all damages and liabilities whatsoever that may be created or occasioned or suffered to be created by Lessee in the possession, maintenance, use or operation of the leased property; provided, however, that all claims against and liabilities of Lessor arising from events occurring prior to the commencement of the term of this lease shall remain Lessor's obligations; and any proceeds realized from similar claims and liabilities in Lessor's favor shall accrue to Lessor.

2(b). In further consideration for Lessor's covenants and agreements hereunder, Lessee covenants and agrees to pay during the term of this lease to Lessor, or for Lessor's account, whichever may prove more mutually convenient, rentals consisting of the following amounts:

(1) All taxes, assessments and governmental charges other than those chargeable to investment account that may be taxed or assessed against

Lessor or against any portion of the property herein described, whether imposed by action of the federal, state or city government or other public authority, including any tax assessed on Lessor's earned income.

(ii) All expenses, including taxes, incurred by Lessor for the purpose of maintaining and perpetuating its corporate organization.

(iii) Annually an amount equal to Lessor's reasonable and normal depreciation and retirement charges; provided, however, that for retirements of property, the abandonment of which required the approval of the Interstate Commerce Commission, Lessee shall pay only such retirement charges which result from the application thereto of a factor reflecting the percentage that the life of the property subsequent to the effective date of this lease until retirement bears to the total life of such property.

(iv) All rentals and other sums which Lessor shall become liable to pay under any existing lease or agreement relating to the exclusive or joint use of any railroad facilities or appurtenances, including Lessor's lease of Des Moines Western Railway Company, or under any such lease or agreement which may be made either by Lessee or by Lessor at the request of Lessee.

(v) All interest which shall accrue on any indebtedness which may be incurred subsequent to the effective date of this lease, with the written consent of Lessee.

(vi) Annually a payment of \$60,000.

3(a). It is further mutually covenanted and agreed that Lessee shall have the exclusive right to use and control the leased property, to collect and appropriate to its own use, the entire income therefrom from any source whatsoever, and to enjoy all rights and powers, privileges and immunities now possessed or which may hereafter be acquired by Lessor in connection with the use and operation of the leased property. Lessee shall also have the right, without consent of Lessor, but only upon approval of any public authority having jurisdiction, to permit others, upon appropriate terms and conditions, to use any part of the leased property.

3(b). It is further mutually covenanted and agreed that any portion of the leased property which in the judgment of Lessee is no longer required for railroad purposes may be sold by Lessee, and when sold shall be conveyed by Lessor, but only in accordance with the provisions of Lessor's Mortgage and any other mortgage or deed of trust which may at the time be a lien upon said property. Unless said Mortgage or any other mortgage or deed of trust requires other disposition, the proceeds of any such sale shall, at Lessee's discretion, be paid to Lessor or shall be applied for Lessor's account to additions and betterments to or capital improvements and changes in the remainder of the leased property, or to the acquisition of other property which shall be transferred to Lessor and shall become subject to the lease, or in payment of any indebtedness of Lessor incurred for the purposes aforementioned in this paragraph.

3(c). It is further mutually covenanted and agreed that, subject to the approval of any public authority having jurisdiction in cases where such approval is necessary, and subject to the provisions and requirements of Lessor's Mortgage or any other mortgage or deed of trust which may at the time be a lien on said property, Lessee, in its own name and on behalf of Lessor, may retire or abandon any portion or portions of the leased property. In the event that any proceeds are realized by Lessee from the retirement or abandonment of any of the leased property, and subject to the provisions of Lessor's Mortgage or any other mortgage or deed of trust which may at the time be a lien on said property, such proceeds shall be paid to Lessor, or shall be applied by Lessee in the same manner as proceeds realized under paragraph 3(b) hereof.

3(d). It is further covenanted and agreed that if at any time during the term of this lease it shall become necessary or desirable, in Lessee's opinion, for the accommodation or development of business upon the leased property to make any extension thereof, or any addition or betterment thereto, or any capital improvement or change therein, Lessee, with the approval, where necessary, of any public authority having jurisdiction, and subject to the provisions of Lessor's Mortgage and any other mortgage or deed of trust which may at the time be a lien upon said property, may make such extension, addition, improvement, betterment or change. All capital expenditures made for these aforementioned purposes shall constitute a financial obligation on Lessor. If any funds necessary for these purposes are not furnished by Lessor, such funds may be furnished by Lessee. Lessor hereby

agrees to reimburse Lessee at the end of each calendar year, or thereafter, upon demand of Lessee, for all funds so furnished by Lessee for such purposes during the year. Lessor, in its discretion, may at any time reimburse Lessee for money so furnished for such purposes. All such extensions, additions, improvements, betterments and changes to and of the leased property made during the term hereof shall become a part of the property hereby leased and subject to this lease.

3(e). It is further mutually covenanted and agreed that a proper apportionment shall be made between the parties of any taxes, rentals or other sums payable under this lease in respect of any period of time not wholly included within the term of the lease.

4. It is also mutually covenanted and agreed that upon the expiration or other termination of this lease Lessee agrees to return to Lessor all of the leased property then existing, including all extensions, additions and betterments thereto, and capital improvements and changes therein.

5. This lease shall bind and inure to the successors and assigns of the parties hereto and shall become effective on the day and year first written above and shall continue thereafter for a term of fifty (50) years, unless sooner terminated, as it may be at any time on thirty (30) days' written notice by either party.



6. In the event that Lessee assigns or otherwise transfers its interests hereunder to a railroad company or other assignee which shall acquire all or substantially all of the railroad properties of Lessee, Lessee shall be released from all obligation and liability hereunder upon execution and delivery to Lessor of an appropriate instrument whereby said assignee shall assume and agree to perform each and all of Lessee's obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused original counterparts of this instrument to be executed by their respective officers thereunto duly authorized, as of the day and year first above written.

FORT DODGE, DES MOINES & SOUTHERN  
RAILWAY COMPANY

By

*W. K. Little*  
VICE PRESIDENT-FINANCE

ATTEST:

*E. C. Marquardt*  
ASSISTANT SECRETARY

CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY

By

*W. K. Little*  
VICE PRESIDENT-FINANCE

ATTEST:

*E. C. Marquardt*  
ASSISTANT SECRETARY

STATE OF ILLINOIS )  
                              ) SS  
COUNTY OF COOK     )

I, ALBERT R. ZUSPANN, a Notary Public duly commissioned and qualified in and for the County and State aforesaid and residing therein, DO HEREBY CERTIFY that JOHN M. BUTLER and E. C. MARQUARDT, to me personally known and known to me to be respectively, Vice President and an Assistant Secretary of Fort Dodge, Des Moines & Southern Railway Company and the identical persons whose names are subscribed to the foregoing instrument appeared before me this day in person, and being first duly sworn by me, severally acknowledged to me that they are, respectively, Vice President and an Assistant Secretary of said corporation; that as such officers they signed, sealed and delivered said instrument in behalf of said corporation by authority and order of its Board of Directors as the free and voluntary act and deed of said corporation, and as their own free and voluntary act; that they know the seal of said corporation; that the seal affixed to said instrument is the seal of said corporation; and that said corporation executed said instrument for the uses and purposes therein set forth.

I, ALBERT R. ZUSPANN, a Notary Public duly commissioned and qualified in and for the County and State aforesaid and residing therein, DO HEREBY FURTHER CERTIFY that JOHN M. BUTLER AND E. C. MARQUARDT, to me personally known and known to me to be, respectively, Vice President and an Assistant Secretary of Chicago and North Western Railway Company and the identical persons whose names are subscribed to the foregoing instrument appeared before me this day in person, and being first duly sworn by me, severally acknowledged to me that they are, respectively, Vice President and an Assistant Secretary of said corporation; that as such officers they signed, sealed and delivered said instrument in behalf of said corporation by authority and order of its Board of Directors as the free and voluntary act and deed of said corporation, and as their own free and voluntary act; that they know the seal of said corporation; that the seal affixed to said instrument is the seal of said corporation; and that said corporation executed said instrument for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary Public, at Chicago, Illinois, this 21<sup>st</sup> day of June, 1971.

My commission as such Notary Public expires AUG 22 1973

Albert R. Zuspann  
Notary Public in and for the  
County of Cook, in the State  
of Illinois.